

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE EXAMINING BOARD OF ARCHITECTS,
PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS
PROFESSIONAL ENGINEERS SECTION

| | | |
|-----------------------------------|---|---------------------|
| IN THE MATTER OF THE DISCIPLINARY | : | |
| PROCEEDINGS AGAINST | : | FINAL DECISION |
| | : | AND ORDER |
| EARL F. MCKINNEY, P.E., | : | CASE NO. 90 ENG 004 |
| RESPONDENT. | : | |

The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

Earl F. McKinney, P.E.
H&M Associates of Kentucky, Inc.
2670 Wilhite Drive
Lexington, KY 40503

Examining Board of Architects, Professional Engineers,
Designers and Land Surveyors; Professional Engineers Section
P.O. Box 8935
Madison, Wisconsin 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, Wisconsin 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Earl F. McKinney, Respondent herein, H&M Associates of Kentucky, Inc., 2670 Wilhite Drive, Lexington, KY 40503, is duly licensed as a professional engineer in the State of Wisconsin, license no. 16262, granted January 28, 1977.

2. Earl F. McKinney, licensed to practice professional engineering in the state of Texas, was subject to disciplinary action by the Texas State Board of Registration for Professional Engineers by Final Order dated December 20, 1989, wherein that Board imposed a 3 year suspension of his license to practice professional engineering in that state; and further, probated the suspension on the condition that any violations of the Texas Engineering Act found in the disciplinary action, if committed again by the Respondent was grounds for revocation of probation and imposition of full suspension for the remainder of the term.

CONCLUSIONS OF LAW

1. The Examining Board of Architects, Professional Engineers, Designers and Land Surveyors, has jurisdiction in this matter pursuant to Wis. Stats., sec. 443.11.

2. In violating the laws relating to the practice of professional engineering in the state of Texas, McKinney has engaged in misconduct in the practice of professional engineering within the meaning of Wis. Stats., sec. 443.11(1), as those terms are defined in Wis. Adm. Code, sec. A-E 8.03(3)(a), and Respondent is therefore subject to disciplinary action by the Professional Engineers Section, pursuant to sec. 443.11, Wis. Stats.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the attached stipulation of the parties is accepted.

IT IS FURTHER ORDERED that the license of Earl F. McKinney to practice professional engineering in Wisconsin is hereby suspended for a term to coincide with his suspension in the state of Texas, and the imposition of the suspension in Wisconsin is stayed on the condition that the Respondent complies with the conditions of his probation in Texas.

IT IS FURTHER ORDERED that Earl F. McKinney shall abide by all state statutes and administrative code provisions governing the practice of engineering in the State of Wisconsin.

IT IS FURTHER ORDERED that pursuant to the authority of ch. RL6, Wis. Adm. Code, should the Wisconsin Examining Board of Architects, Professional Engineers, Designers and Land Surveyors, Professional Engineers Section, determine that there is probable cause to believe that Earl F. McKinney has violated the terms of his suspension/probation in the state of Texas or the laws of the State of Wisconsin, the Professional Engineers Section may order the license of Earl F. McKinney to practice professional engineering in the State of Wisconsin be summarily suspended pending investigation of the alleged violation.

IT IS FURTHER ORDERED that the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors, Professional Engineers Section, shall close investigative file number 89 ENG 021.

Dated this 15th day of November, 1991.

EXAMINING BOARD OF ARCHITECTS, PROFESSIONAL
ENGINEERS, DESIGNERS AND LAND SURVEYORS;
PROFESSIONAL ENGINEERS SECTION

By: _____

A Member of the Board

11/15/91
Date

RH:mkm
ATY-1793

STATE OF WISCONSIN
BEFORE THE EXAMINING BOARD OF ARCHITECTS,
PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS
PROFESSIONAL ENGINEERS SECTION

| | | |
|-----------------------------------|---|---------------------|
| IN THE MATTER OF THE DISCIPLINARY | : | |
| PROCEEDINGS AGAINST | : | |
| | : | STIPULATION |
| EARL F. MCKINNEY, P.E., | : | CASE NO. 90 ENG 004 |
| RESPONDENT. | : | |

It is hereby stipulated and agreed, by and between Earl F. McKinney, P.E., Respondent; and Roger R. Hall, Attorney for Complainant, Wisconsin Department of Regulation and Licensing, Division of Enforcement, as follows:

1. The Examining Board of Architects, Professional Engineers, Designers and Land Surveyors has jurisdiction over this matter pursuant to Wis. Stats. sec. 443.11.
2. This Stipulation is entered into as a result of a pending investigation of Earl F. McKinney's practice as a professional engineer by the Division of Enforcement. Mr. McKinney consents to the resolution of this investigation by Stipulation and without the issuance of a formal disciplinary complaint and hearing.
3. The Respondent understands by signing this Stipulation that he voluntarily and knowingly waives his rights in this matter, including the right to a hearing on the allegations against him, at which time the State has the burden of proving the allegations by clear, satisfactory and convincing evidence, the right to confront and cross-examine the witnesses against him, the right to call witnesses on his own behalf and to compel their attendance by subpoena, the right to testify in his own behalf, the right to file objections to any proposed decision and present briefs or oral arguments to the officials who are to render the final decision, the right to petition for rehearing and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes and the Wisconsin Administrative Code.
4. This Stipulation shall be submitted to the Professional Engineers Section of the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors to form the basis for the Final Decision and Order in this matter.
5. The Final Decision and Order attached to this Stipulation may be made and entered in this matter by the Wisconsin Professional Engineers Section, without prior notice, pleading, appearance or consent of any party. Respondent agrees that in the event the attached Final Decision and Order is made and entered, he will not appeal or seek review of the Final Decision and Order of the Board and hereby expressly waives any right to appeal.
6. In the event any portion of this Stipulation or attached Findings of Fact, Conclusions of Law and Final Decision and Order is not accepted by the Professional Engineers Section, the entire Stipulation and Findings of Fact, Conclusions of Law and Final Decision and Order shall be void and have no effect.

7. The attorney for the Complainant, and the Board Advisor assigned to this matter, may appear before the Professional Engineers Section and answer questions or argue in favor of acceptance of this Stipulation and the entering and issuance of the attached Final Decision and Order in the absence of any appearance by the Respondent.

8. If this Stipulation is adopted by the Wisconsin Examining Board of Architects, Professional Engineers, Designers and Land Surveyors, Professional Engineers section, the attached Order shall become effective upon the signing of the Order.

9. Earl F. McKinney, P.E., Respondent herein, is a professional engineer currently licensed to practice professional engineering in the State of Wisconsin. His license bears #16262.

10. Respondent admits that on December 20, 1989, the Texas State Board of Registration for Professional Engineers filed a Final Order in its disciplinary action against Respondent wherein McKinney's registration to practice professional engineering in Texas was suspended and the suspension was probated for 3 years on the condition that any violations of the Texas Engineering Act found in the disciplinary action if committed again during the probation period were grounds for revocation of probation and imposition of full suspension.

11. In order to bring this matter to a final resolution, the Respondent agrees to accept similar discipline of his license to practice professional engineering in the State of Wisconsin with the term to be concurrent with his discipline in the state of Texas.

12. In view of the foregoing agreement on the part of the Respondent, the Division of Enforcement agrees to recommend to the Wisconsin Professional Engineers Section that it accept this Stipulation and issue the attached Final Decision and Order.

Dated this 15 day of Oct., 1991.

Earl F. McKinney
Earl F. McKinney, Professional Engineer

Dated this 25th day of October, 1991.

Roger R. Hall
Roger R. Hall, Attorney for Complainant
State of Wisconsin
Department of Regulation and Licensing
Division of Enforcement

RRH:mkm
ATY-1795

NOTICE OF APPEAL INFORMATION

**(Notice of Rights for Rehearing or Judicial Review,
the times allowed for each, and the identification
of the party to be named as respondent)**

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Examining Board of Architects, Professional Engineers, Designers and Land Surveyors.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Examining Board of Architects, Professional Engineers, Designers and Land Surveyors

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Examining Board of Architects, Professional Engineers, Designers and Land Surveyors.

The date of mailing of this decision is November 19, 1991.